

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

2004 SEP 29 A 10: 51

U.S. DISTRICT COURT  
DISTRICT OF MASS.

ARTHUR A. MANDROS,

Plaintiff

vs.

BARLETTA ENGINEERING CORP. and  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 4,

Defendants

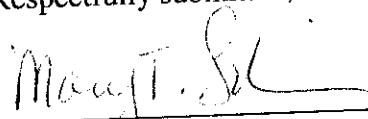
C.A. 04-11999 REK

**MOTION OF DEFENDANT INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 4, TO DISMISS THE COMPLAINT AND CERTIFICATE OF  
COMPLIANCE WITH LOCAL RULE 7.1**

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendant International Union of Operating Engineers, Local 4 ("Local 4") moves to dismiss this action for lack of subject matter jurisdiction and for failure to state a claim against Local 4 upon which relief can be granted. This motion is made on three separate and independent grounds, namely that: (1) the state law cause of action against Local 4 is preempted by federal law; (2) Plaintiff has failed to allege that he filed a complaint with the Massachusetts Attorney General prior to bringing suit as required by the state wage law; and (3) the state law on which Plaintiff's action is premised does not provide for a cause of action against a union for an employer's failure to pay wages.

This motion is supported by the accompanying Memorandum of Law in Support of Local 4's Motion to Dismiss and the pleadings on file in this matter.

Respectfully submitted,

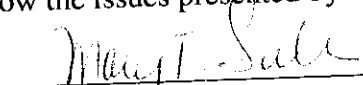


Mary T. Sullivan BBO # 487130  
Indira Talwani BBO # 645577  
**SEGAL, ROITMAN & COLEMAN**  
11 Beacon Street, Suite #500  
Boston, MA 02108  
(617) 742-0208

Dated: September 28, 2004

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

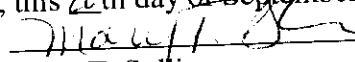
I hereby certify that on September 29<sup>th</sup>, 2004, I conferred with Plaintiff's counsel, Brian T. Hatch and attempted in good faith to resolve or narrow the issues presented by this motion.



Mary T. Sullivan

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION OF DEFENDANT INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 4, TO DISMISS THE COMPLAINT has been served upon Plaintiff Arthur A. Mandros, by service upon his attorney of record, Brian T. Hatch, 8 North Main Street, Suite 403, Attleboro, MA 02703, and upon Defendant Barletta Engineering Corp., by service upon Joseph McConnell, Morgan, Brown & Joy, One Boston Place, Boston, MA 02108, by mail, postage prepaid, this 28th day of September, 2004.



Mary T. Sullivan